Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

80-1001

No. ----------

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

EDDIE JACKSON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDDIE JACKSON
Pro Se
Inmate No. 30368-117
Box PMB
Talladega, Alabama 35160

QUESTION PRESENTED

Whether the courts below, in their refusal to hear petitioner's motion to vacate his sentence, have perpetuated an earlier misapplication of the law regarding the sufficiency and propriety of a wiretap warrant application under 18 U.S.C. §2518 where government investigators purposely withheld material from the issuing judge, and where the reviewing judge imputed to the issuing judge knowledge of later-acquired matter, essentially unknowable by her at the time of issuring the warrant, in order to sustain the legality of the wiretap order.

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IN THE
SUPREME COURT OF THE UNITED STATES
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Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

The petitioner Eddie Jackson respectfully requests that a writ of certiorari issue to review the order of the United States Court of Appeals for the Sixth Circuit entered in this case on September 19, 1980.

QUESTION PRESENTED

Whether the courts below, in their refusal to hear petitioner's motion to vacate his sentence, have perpetuated an earlier misapplication of the law regarding the sufficiency and propriety of a wiretap warrant application under 18 U.S.C. §2518 where government investigators purposely withheld material facts from the issuing judge, and where the reviewing judge imputed to the issuing judge knowledge of later-acquired matter, essentially unknowable by her at the time of issuing the warrant, in order to sustain the legality of the wiretap order.

OPINIONS BELOW AND JURISDICTION

Petitioner Eddie Jackson filed a motion to vacate his sentence under 28 U.S.C. §2255 in the United States District Court for the Eastern District of Michigan. By order dated December 5, 1979, Eddie Jackson's motion was denied. He then appealed this disposition to the Sixth Circuit Court of Appeals. By order dated September 19, 1980, the decision of the District Court was affirmed. Copies of these orders appear in the Appendix herein. The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

STATUTES INVOLVED

Relevant portions of 18 U.S.C. §2516 and 18 U.S.C. §2518 are set forth in the Appendix.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Petitioner Eddie Jackson was indicted in 1972 on charges of possessing narcotics in violation of 21 U.S.C. §841 and of conspiring to manufacture, distribute and possess narcotics in violation of 21 U.S.C. §846. Approximately thirty defendants were indicted with Mr. Jackson in two separate indictments.

Following consolidated pre-trial proceedings, at which a motion was made to suppress the evidence obtained by a court-ordered wiretap, all the defendants waived jury trials and both indictments were tried simultaneously before District Judges John Feikens and Philip Pratt in the Eastern District of Michigan.

On July 22, 1974, Eddie Jackson was convicted of conspiracy and a number of the substantive counts against him. He was sentenced to a total of 20 years' imprisonment, fines totalling over $60,000, and a special three year parole term. During the trial, he had renewed his motion to suppress the wiretap evidence. It

was again denied. His conviction was affirmed on direct appeal. United States v. Woods, 544 F.2d 242 (6th Cir. 1976), cert. denied, 431 U.S. 954 (1977).

Eddie Jackson subsequently filed a motion to vacate his sentence under 28 U.S.C. §2255 because of the wiretap issue and because his sentence was illegal. Judge Feikens denied the motion in its entirety, but the Court of Appeals reversed the sentence portion of Judge Feikens' order since the sentences imposed were multiplicitous. Jackson v. United States, No. 78-5469 (6th Cir., April 17, 1979), cert. denied No. 79-78 (October 1, 1979).

Eddie Jackson subsequently filed a second §2255 motion with Judge Feikens. In his new motion, he alleged that Judge Feikens had imputed knowledge to Judge Cornelia Kennedy, who issued the wiretap order, that Judge Kennedy had no way of knowing. Thus, Eddie Jackson claimed that not only was the warrant issued on false and misleading information, but that Judge Feikens sustained its legality by the use of raw speculation and non-evidentiary facts. Judge Feikens summarily denied this motion without a hearing because he had dealt with the wiretap issue twice before and found it without merit. The Sixth Circuit Court of Appeals agreed with Judge Feikens

and summarily affirmed without a hearing. This petition followed.

FACTS

Agents of the Bureau of Narcotics and Dangerous Drugs suspected Eddie Jackson and others of being involved in wholesale narcotics traffic in the city of Detroit. During the course of their investigation, although they had an informer who had infiltrated the so-called "Jackson organization" and had been offered a high-level position in the organization, the agents applied to Judge Cornelia Kennedy for permission to tap the phone in Eddie Jackson's home at 19315 Hubbell Street, Detroit. Judge Kennedy issued an order. Conversations later obtained pursuant to Judge Kennedy's order were a major portion of the government's evidence at trial.

The application for the wiretap order consisted of an affidavit sworn to by Agent Ronald Garibotto. A copy of this affidavit appears in the Appendix herein. In the affidavit, Garibotto stated that although he had an informant, called "S-1", in the "Jackson organization", the informant could not learn anything substantial and could not move any further in the organization. Thus, he concluded that "normal investigative proceedures appeared unlikely to succeed."

At trial, the identity of "S-1" was disclosed. Eddie Jackson was surprised to learn "S-1" was Roosevelt Nabors who had, in fact, been offered a top-level position in the organization but had declined the offer prior to Agent Garibotto's submitting his affidavit to Judge Kennedy. Thus, it became known that Agent Garibotto deliberately refused to include this information in his affidavit because he could not have claimed that the government's normal investigative procedures were unlikely to succeed.

Upon Eddie Jackson's renewed motion to suppress the wiretap evidence at trial, Judge Feikens noted that Judge Kennedy could have issued the order even if the Nabors offer were known because of certain speculative factors that Judge Feikens listed. The portion of Judge Feikens order discussing the wiretap issue is included in the Appendix herein.

In his direct appeal and in his first §2255 motion, Eddie Jackson insisted that, in light of Agent Garibotto's actions, the affidavit was constitutionally and statutorily infirm since it did not provide the "necessity" for a highly-intrusive wiretap order under the Fourth Amendment and 18 U.S.C. §2518. Thus, the earlier decisions simply addressed the substantive sufficiency of the affidavit if Agent Garibotto had been honest.

His present motion, on the other hand, discussed the procedural means by which a reviewing judge can determine the substantive sufficiency of an affidavit where he relies on speculation and ex post facto rationalizations to sustain the issuing judge's order. Thus, the new issue he raised is the propriety of Judge Feikens' conduct in his review of Judge Kennedy's and Agent Garibotto's part in the issuance of the wiretap order, not the propriety of the underlying issuance.

DECISIONS BELOW

As the copies of the orders of Judge Feikens and the Sixth Circuit Court of Appeals, which appear in the Appendix herein show, Eddie Jackson's motion was denied because both courts deemed Mr. Jackson to have fully litigated the wiretap issue. Both courts summarily denied the motion and refused to grant him a hearing at which counsel could appear and assist him in the presentation of his case.

REASONS FOR GRANTING THE WRIT

This petition raises two important issues concerning 18 U.S.C. §2518(1)(c). The first, which has not been considered by this Court but that has been deemed settled by the

Sixth Circuit Court of Appeals, is the factual predicate for a determination of "necessity" under the statute. The second, which is raised directly by Eddie Jackson's present motion, is the extent to which a reviewing judge can rehabilitate an affidavit that does not, on its face, provide the requisite "necessity" for a wiretap because of the deliberate withholding of material facts by a government affiant.

NECESSITY

Eddie Jackson has maintained through his direct appeal and two §2255 motions that the wiretap statute requires the government to establish a pressing need for a wiretap before an order will issue. 18 U.S.C. §2518(3)(c); United States v. Giordano, 416 U.S. 505, 515 (1974); Note, Electronic Surveillance, Title III, and the Requirement of Necessity, 2 Hastings Const. L.Q. 571 (1975).

Mr. Jackson has consistently claimed that the affidavit of Agent Garibotto, given subsequent disclosures at his trial, would not have supported the issuance of a wiretap order if Agent Garibotto had disclosed to Judge Kennedy that his informant, Roosevelt Nabors, had been offered a top-level position that would have provided a ready source for the same information that was

obtained by the wiretap. Although Judge Kennedy was never given the opportunity to decide the need for the wiretap on the state of facts as they appeared at the time, Judge Feikens, the reviewing judge, noted that "even as a lieutenant, Nabors would have had difficulty in learning all the complex details of the widespread organization," and "in view of Nabors' lengthy prior criminal record, the government would have had great difficulty in establishing criminal liability by his testimony alone." See the Appendix herein, 11a. He then stated that the allegations in the affidavit, even if corrected in accord with later testimony, would have supported the issuance of the warrant. Mr. Jackson has consistently maintained that the necessity requirement would not have been met had Agent Garibotto been honest.

This issue is the one that Mr. Jackson has raised before and that Judge Feikens and the Sixth Circuit Court of Appeals have arguably decided twice. It is, however, related to, but not the same as, the issue he is raising on this motion.

REVIEWING THE WIRETAP ORDER

Eddie Jackson has specifically challenged the means by which Judge Feikens, on his

review of the wiretap order and the sufficiency of the affidavit supporting it, retroactively imputed to Judge Kennedy his knowledge of Roosevelt Nabors and the "Jackson organization" that he obtained informally and at trial. By so doing, he minimized the failure of Agent Garibotto to provide all material facts in his possession to Judge Kennedy for her independent evaluation of the necessity for the wiretap order.

In his present motion, Eddie Jackson alleged that if Judge Feikens properly relied on the evidence that would have been available to Judge Kennedy at the time Garibotto presented his false affidavit, and not on his own estimation of the matter with the inestimable benefit of hindsight, he would have been constrained to suppress the evidence stemming from the wiretap.

Neither Judge Feikens nor the Sixth Circuit Court of Appeals addressed this narrow issue which is not a wholesale attack on the wiretap order and which has not been raised before. Thus, it was error for the courts below to refuse to grant Eddie Jackson a hearing on the issue of the means used to support the wiretap order in the face of the serious deficiencies in the government's application. Accordingly, the case should be remanded for full consideration of the validity of the wiretap order, including the

sufficiency of the underlying application in light of the "necessity" requirement and the facts that were actually available to Judge Kennedy at the time she issued it.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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December, 1980

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EDDIE JACKSON,

Petitioner

-vs-

UNITED STATES OF AMERICA,

Respondent

---/

CRIMINAL NO. 46597
CIVIL NO. 9-74421

ORDER

At a session of said Court, held in the United States Courthouse, in the City of Detroit, Wayne County, Michigan, this 5th day of December, A.D. 1979;

Present: THE HONORABLE JOHN FEIKENS
Chief United States District Judge

In this motion to vacate sentence, brought pursuant to 28 U.S.C. §2255, petitioner alleges that the warrant authorizing wiretaps of certain telephone conversations during the course of the Government's investigation of him and his co-conspirators was issued in violation of the wiretap statute, 18 U.S.C. § 2518. Specifically, he alleges that the

authorizing judge relied on information not in the informant's affidavit in granting the wiretap order, and that had the affidavit alone been relied upon, there would not have been sufficient evidence to grant the wiretap order.

The circumstances, contents, and sufficiency of the application for the wiretap order in petitioner's case have twice been considered by me and by the United States Court of Appeals for the Sixth Circuit. The Court of Appeals upheld the wiretap order in petitioner's direct appeal of the conviction, United States v. Woods, 544 F.2d 242, 256-258 (6th Cir. 1976), and in his previous motion to vacate sentence, Jackson v. United States, No. 78-5469 (6th Cir., decided 4/17/79). Petitioner here raises no new factual or legal claims with regard to the application for the wiretap. Since his claim has previously been considered and decided as to its merits, he is not entitled to a hearing on his motion. 28 U.S.C. §2255; Moody v. United States, 580 F.2d 238 (6th Cir. 1978).

Therefore, IT IS ORDERED that petitioner's motion to vacate sentence be, and hereby is, DENIED.

/s/ John Feikens

John Feikens
Chief United States District Judge

No. 80-5071

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

EDDIE JACKSON Petitioner-Appellant	)	[Filed Sep19 1980]
v.	)	O R D E R
UNITED STATES OF AMERICA Respondent-Appellee	)	

BEFORE: MARTIN and JONES, Circuit Judges; and
PECK, Senior Circuit Judge

This appeal has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the briefs and record, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

Petitioner argues on appeal from a judgment denying his motion to vacate sentence that the affidavit in support of the application for the wiretap failed to comply with 18 U.S.C. § 2518 and that the authorizing judge relied on information not contained in the affidavit when she issued the wiretap order.

It is determined that the District Court did not abuse its discretion in denying petitioner's motion to vacate sentence for the reasons

expressed in its order dated December 5, 1979. Clearly, the application of the doctrine of res judicata to bar the relitigation of the validity of the wiretap order under the circumstances of this case is fully consistent with the policies supporting the doctrine. State of Montana v. United States, 440 U.S. 147 (1979); United States v. LaFatch, 565 F.2d 81 (6th Cir. 1977), cert. denied sub nom. LaFatch v. MM Corp., 435 U.S. 971 (1978). "To preclude parties from contesting matters that they have had a full and fair opportunity to litigate protects their adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." State of Montana v. United States, 440 U.S. at 153-154.

It is, accordingly, ORDERED that the District Court's judgment be and hereby is affirmed pursuant to Rule 9(d)3, Rules of the Sixth Circuit, because the questions on which the cause depends are so unsubstantial as not to need further argument.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

STATUTES INVOLVED

18 U.S.C. § 2516

> (1) The Attorney General, or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made . . .

18 U.S.C. § 2518

> (1) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make such application. Each application shall include the following information:
>
> > (a) the identity of the investigative or law enforcement officer making the application, and the officer, authorizing the application.

* * * * *

(c) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;

* * * * *

(3) Upon such application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that --

* * * * *

(c) normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous;

* * * * *

(4) Each order authorizing or approving the interception of any wire or oral communications shall specify --

* * * * *

(d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application;

* * * * *

(10) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that --

(i) the communication was unlawfully intercepted;

(ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or

(iii) the interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall

be treated as having been obtained in violation of this chapter. The judge, upon the filing of such motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

* * * * *

EXCERPT OF
MEMORANDUM OPINION AND ORDER
CONCERNING TRIAL ISSUES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, CRIMINAL NO. 46597

vs.

EDDIE JACKSON, et al.,

Defendants.

_____/

UNITED STATES OF AMERICA,

Plaintiff, CRIMINAL NO. 46598

vs.

WILLIE LEE KILPATRICK, et al.,

Defendants.

_____/

MEMORANDUM OPINION AND ORDER

These cases are currently before the Court for decision after a bench trial.

In this memorandum the legal issues which arose during and after trial will be discussed. Before proceeding to a discussion of those issues, however, a brief factual summary of these cases and the trial should be helpful.

* * *

I. Wire Interceptions

Throughout these proceedings defendants have challenged the lawfulness of wire interceptions made under the provisions of Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. § 2511 et seq.). Defendants now raise three additional arguments in seeking to suppress all evidence derived from these interceptions.

* * *

B.

Defendants further contend that the evidence produced at trial clearly indicated that electronic surveillance was not necessary in this case and that normal investigative procedures would have been satisfactory. This argument is founded upon 18 U.S.C. § 2518(3) which requires a showing that normal investigative procedures are inadequate before wire interception methods may be utilized.

At trial one of the defendants in Number 46598, Roosevelt Nabors, testified for the government. Defendants assert that Nabors could have infiltrated the organization allegedly formed by defendant Jackson and that a wiretap on Jackson's telephone at 19315 Hubbell Street was unnecessary.

In the previous opinions, we fully discussed this issue and held that there had been a sufficient showing in each application and supporting affidavit submitted to Judge Kennedy to support her finding that normal investigative procedures would reasonably appear to be unlikely to succeed. Absent a showing that the averments relied upon by Judge Kennedy in making this determination were knowingly false or made in bad faith, her finding is necessarily conclusive.

Defendants contend, however, that Nabors had an opportunity to become a lieutenant in "the Jackson organization." While this may well be true, it does not substantially detract from the averments of Special Agent Ronald S. Garibotto in his affidavits submitted to Judge Kennedy in support of the two wiretap applications. Narcotics distribution operations are extremely complex. Thus it would be unlikely that Nabors could learn the extent of the alleged conspiracy even if he could have, in fact, infiltrated the organization. Additionally, with his lengthy prior criminal record, Nabor's reliability, both during the investigation and as a witness at trial, was marginal at best.

In United States v. Pacheco, 489 F.2d 554 (1974), the Fifth Circuit, in a case similar to the case at bar, held that the availability of an informant is not sufficient to eliminate the need for a wiretap when the investigation involves a complex illicit operation.

> "In no realistic sense could it be said that Mrs. Matthews had information that would eliminate, or, in

> some instances, even lessen, the need for the Fox tap. Without the Fox tap, there would have been at least seven defendants who would not have appeared in the case at all, and the sole evidence as to several others would have been the uncorroborated testimony for an accomplice previously convicted of purjury[sic]. Finally, we note that the purpose of the requirement in section 2518(1)(c) is not to foreclose electronic surveillance until every other imaginable method of investigation has been unsuccessfully attempted, but simply to inform the judge of the difficulties involved in the use of conventional techniques."
>
> 489 F.2d at 565.

See also United States v. Bleau, 363 F. Supp. 438, 441 (D. Md. 1973), and United States v. Staino, 358 F.Supp. 852, 856-7 (E.D. Pa. 1973).

More importantly, however, this Court cannot properly review the propriety of Judge Kennedy's findings in the two wire interception orders unless the averments made in the affidavits in support of the applications were in some way tainted. A wire interception order issued under 18 U.S.C. § 2518, like an ordinary search warrant, cannot normally be challenged if it is facially valid. Here the only additional fact offered is that an informant might have been able to infiltrate the so-called Jackson Organization. We do not believe this evidence is sufficient to permit a re-opening of Judge Kennedy's finding that normal investigative procedures appear to be unlikely to succeed.

* * *

A number of other issues were raised during the course of the trial by defense counsel.[14] Since, however, defendants have not presented any written arguments on these questions, they apparently do not wish to pursue them at this time. We have nevertheless considered each and believe them to be without merit.

JOHN FEIKENS
United States District Judge

PHILIP PRATT
United States District Judge

Dated: July _____, 1974.

Detroit, Michigan

14/ These issues include (1) dismissal after the government's opening statement; (2) the lawfulness of the arrest of defendants Kilpatrick, Reynolds and Riggs in New York; (3) demand for evidence seized from defendants Kilpatrick and Reynolds in New York, and (4) admissibility of evidence at trial relating to occurrence before the alleged beginning of the conspiracy.

AFFIDAVIT OF RONALD S. GARIBOTTO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES OF AMERICA FOR AN ORDER AUTHORIZING THE INTERCEPTION OF WIRE COMMUNICATIONS	No. A-11-11-71 CK

AFFIDAVIT

IN SUPPORT OF APPLICATION

Ronald S. Garibotto, being duly sworn, states:

1. I am a Special Agent of the Federal Bureau of Narcotics and Dangerous Drugs, United States Department of Justice. I have been so employed for two and one-half years (2 1/2) and have been assigned to the Federal Bureau of Narcotics and Dangerous Drugs, Regional Office, Region VI, Detroit Michigan for two years. I am an "investigator or law enforcement officer.....of the United States" within the meaning of Section 2510(7) of Title 16, United States Code - that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for the offenses enumerated in Section 2516 of Title 18, United States Code.

2. This Affidavit seeks authorization to intercept wire communications for a twenty (20) day period concerning offenses involving violations of 21 U.S. C. 841(a)(1), 843(b), 844(a) and 846, which have been and are being committed by Eddie JACKSON, George BLAIR and others as yet unknown.

3. I have participated in the conduct of investigation of the offenses of Eddie JACKSON and George BLAIR. As a result of my personal participation in these investigations, of my knowledge of reports made to me by other Special Agents of the Federal Bureau of Narcotics and Dangerous Drugs and by officers and officials to the Detroit Police Department, in this matter and of my personal knowledge of the circumstances of these offenses involving the violations described in paragraph 2 above, I allege facts contained in the following numbered paragraphs to show that:

(a) there is probable cause to believe that Eddie JACKSON, George BLAIR and others as yet unknown have committed and are committing violations of Title 21, United States Code, Sections 841(a)(I), involving the knowing or intentional manufacture or distribution or the possession with intent to manufacture or distribute a controlled substance; 843(b), involving the knowing or intentional use of any communications facility in committing or in causing or facilitating the commission of violations of Sections 841(a)(I), 844 (a) and 846 of Title 21, United States Code; 844(a) involving unlawful possession of a controlled substance; and 846

involving a conspiracy to violate Sections 841(a)(I), 843(b) and 844(a) of Title 21, United States Code.

(b) there is probably cause to believe that telephone communications concerning the above-described offenses will be obtained through the interception of wire communications, authorization for which is herein applied. In particular, these wire communications to be intercepted will concern the dates, times, places, schemes and manners for selling, buying, possessing, concealing, delivering, distributing or paying for controlled substances when Eddie JACKSON and George BLAIR communicate with their co-conspirators, aiders and abetters, and their places of operation.

(c) normal investigative procedures reasonably appear to be unlikely to succeed.

(d) there is probable cause to believe that the telephone utilized by Eddie JACKSON and George BLAIR, located in the premises at 19315 Hubbell, Detroit, Michigan and carrying telephone number 313-864-4854 has been, is being and is about to be used by Eddie JACKSON, George BLAIR and others as yet unknown in connection with the commission of the above-described offenses.

4. Congressional findings and declarations to Title 11, Section 101 of Public Law 91-513, 84 Stat. 1242, 21 U.S. C. 801, the "Controlled Substance Act" of the Comprehensive Drug Abuse Prevention and Control Act of 1970 include subsections (2) through (7). These excerpted findings

are set out in full in paragraph number four of the Application and are incorporated by reference herein.

5. Based on my experience in criminal investigations concerning illegal controlled substances trade and the experience of other Special Agents in investigations concerning illegal controlled substance transactions, it has been determined that an illegal controlled substances manufacturer or distributor requires the use of a telephone facility to negotiate times, places, schemes and manners for selling, buying, possessing, concealing, delivering, distributing, or paying for controlled substances.

6. A confidential informant of the Bureau of Narcotics and Dangerous Drugs hereinafter identified as S-1, has provided consistently reliable and valuable information in the past six months which has been corroborated by independent investigation and through other sources of information. Information from S-1 has been the basis for eight separate investigations completed except for arrest and aprehension [sic] involving 15 large-scale narcotic defendants.

7. On October 22, 1971 S-1 placed a telephone call to telephone number 313-864-4854 in the presence of Bureau of Narcotics and Dangerous Drugs Special Agents Claude Smith and Richard Waber consenting to the Agents overhearing S-1's conversation with George BLAIR or Eddie JACKSON. The consensual overhearing was recorded and a portion of the transcript of that recording is as follows:

BLAIR: Hello.

S-1: How ya doin'?

BLAIR: Alright.

S-1: Did ya make it yet?

BLAIR: Huh?

S-1: Did ya make it yet?

BLAIR: Yeah, this is George.

S-1: What's happenin'?

BLAIR: Nothin' too much.

S-1: Hey, man, you the doctor.

BLAIR: Yeah, I been by your house, man.

S-1: My woman told me you was by, I was over by my man's, you know?

BLAIR: Yeah.

S-1: And a, we gettin' together on that thing.

BLAIR: Uh, huh.

S-1: So, listen, we got everything together, that thing, you know.

BLAIR: Oh.

S-1: For that 30?

BLAIR: Yeah.

S-1: That eighth.

BLAIR: Uh huh.

S-1: Uh huh, well, look here, now, what I'm gonna do, I'm gonna get right on in and get right on out.

BLAIR: Uh huh.

S-1: You know what I mean?

BLAIR: Uh huh.

S-1: Like, a lotta time been sayin', you know, they gonna take me out there, you know, to meet the man, you know?

BLAIR: Uh huh.

S-1: Tell me wait around the corner,

BLAIR: Uh huh, no (IA) I'll bring him here. I don't know whether he'll be here, you know, when (IA) Bubba, you know, they went someplace. But you can come here, you understand, and I'll tell you where he be at and everything.

S-1: Well, dig this, see what I'm talkin' about, George, well,

I'm gonna get you that, take you to the man then wait here, they go around the corner and they have the stuff when they get out there, you know, a, just be a lot of bull shit like they coppin' from that guy, they already had it when they go out there and while they around the corner, they go on in and bull shit around and come right back with some bull shit.

BLAIR: Uh huh.

S-1: And then there won't be nothin' and then I can't,

BLAIR: Hey a, where you at, now, man?

S-1: I'm on, I'm over here on LaSalle.

BLAIR: La Salle?

S-1: Uh huh.

BLAIR: What's the number?

S-1: I have to find out the house number.

BLAIR: OK

S-1: OK?

BLAIR: OK

S-1: Hold on.

Short pause

BLAIR: No, I'm gonna come and pick you up.

S-1: You gonna come pick me up?

BLAIR: Yeah, that's what I'm gonna do, because you said you wanted to be here, didn't you?

S-1: Yeah, well, I tell you what, well, I tell you what you do.

BLAIR: Yeah.

S-1: Well, see, we driving, let's say, we can meet you somewhere, where you want us to meet you at?

BLAIR: A, hey a, (IA to background) 9,

S-1: Huh?

BLAIR: 19315

S-1: 19315. Lemme get a pencil, George.

BLAIR: OK

S-1: (IA to background) Hold on, we tryin' to get a pencil. You know, we been tryin' and

runnin' and he ain't got nothin', you know?

BLAIR: Uh huh.

S-1: I told my man, you know, I said I finally found my man, you know. We been, look here, George, we spend 75, you know.

BLAIR: Uh huh.

S-1: 24

BLAIR: A, we can't, you can't talk like that,

S-1: Yeah.

BLAIR: But a, you know, everything is guaranteed, my man.

S-1: Yeah.

BLAIR: You know, whatever I, you know I say, it's a guarantee, ain't no bull shit.

S-1: Well, that's 19,

BLAIR: 315.

S-1: 315.

BLAIR: Yeah.

S-1: 19315.

BLAIR: Uh huh.

S-1: What's the street?

BLAIR: A, Hubbell.

S-1: Hubbell?

BLAIR: Uh huh.

8. S-1 stated after the conversation that he talked to a man that he knew as George BLAIR to set up the purchase of one eighth kilogram of heroin, 30 quarters of heroin.

9. Following the conversation S-1 and Special Agent Smith drove to 19315 Hubbell, Detroit, Michigan. S-1 introduced Special Agent Smith to George BLAIR who introduced S-1 and Special Agent Smith to Eddie JACKSON. Eddie JACKSON pointed to a quantity of white powdery substance on the kitchen table which appeared to be one eighth kilogram and told Special Agent Smith "it's all yours." JACKSON also told Special Agent Smith that he preferred meeting with his customers to guarantee his "stuff", the one eighth kilogram would take 10 cuts and he would accept $4,000 for the heroin instead of his price of $4,200. While Special Agent Smith was there, he heard the telephone ring on numerous occasions which was answered by George BLAIR.

10. A chemical analysis was performed on the substance obtained from Eddie JACKSON by Lawrence O. Buer, Forensic Chemist, Bureau of Narcotics and Dangerous Drugs, Chicago, Illinois, which revealed the substance to be 29 percent heroin

hydrochloride with a total weight of 151.03 grams.

11. On November 4, 1971 S-1 placed a telephone call to 313-864-4854 and gave consent to Special Agent Smith and Special Agent Ronald Garibotto to over hear his conversation with George BLAIR or Eddie JACKSON. This conversation was recorded and a partial transcript of the conversation is as follows:

Unident. Male:	Hello.
S-1:	A, George please.
U/M:	A, he isn't here. He be in 'bout 15 minutes.
S-1:	Listen, is Jackson back yet?
JACKSON:	Hello.
S-1:	What do ya know?
JACKSON:	What's happenin'?
S-1:	I'm comin' to see ya.
JACKSON:	Yeah, well I been waitin' on ya a long time.
S-1:	(laugh) I'm on my way in a minute.
JACKSON:	Alright, come on with it.
S-1:	Yeah, OK.

JACKSON: Hey.

S-1: Huh?

JACKSON: Gemme some idea what, you know, you talkin' about.

S-1: About a eighth.

JACKSON: Yeah, alright.

S-1: I'll see ya in a minute.

JACKSON: OK.

12. Following the telephone conversation S-1 told Special Agent Smith and Special Agent Garibotto that he had just talked to Eddie JACKSON setting up a deal for one eighth kilogram of heroin. Special Agent Smith identified Eddie JACKSON's voice from Special Agent Smith's prior conversations with him.

13. Immediately after the telephone call, S-1 and Special Agent Smith drove to 19315 Hubbell, Detroit, Michigan and met with Eddie JACKSON and Courtney R. BROWN. Special Agent Smith observed Eddie JACKSON working a "sifter" as he was sifting the white powdery substance which appeared to be heroin. JACKSON then measured out one eighth kilogram of heroin which he took from what appeared to be a 3-pound clear plastic bag filled with what appeared to be heroin. Special Agent Smith paid Eddie JACKSON $4,200 for the heroin. While there, Special Agent Smith observed Courtney R. BROWN remove a similar bag of approximately

3 pounds of the white powdery substance which appeared to be heroin from a cabinet in the same house. JACKSON told Special Agent Smith that it was costing him $25,000 to get his "woman" out of jail in New York City. Special Agent Smith asked JACKSON how his business was and JACKSON replied, as he was sifting what appeared to be heroin, that "I'm just trying to turn the "stuff" over as fast as possible."

14. While in the house, Special Agent Smith heard the telephone ring numerous times which was answered by Courtney R. BROWN.

15. On September 27, 1971 Cynthia Joyce RIGGS was arrested in a New York City airport with approximately 2 kilograms of heroin in her possession. Miss Riggs' bond was attempted to be posted by Eddie JACKSON of 17533 Westhampton, Southfield, Michigan. Miss Riggs' was seen boarding an aircraft in Detroit with a destination of New York City on September 27, 1971 and was observed by an airlines official to have obtained her ticket by a companion who reached into a sack full of money to obtain the required air fare.

16. On November 4, 1971 Special Agent Smith performed the Marquis Reagent field test on the substance obtained on November 4, 1971 which reacted positively as heroin hydrochloride and contained a gross weight of 164.4 grams.

17. Special Agent Smith reviewed the taped duplicated copies of the original

taped wire interceptions before preparing these excerpts of the telephone conversations set out above and identified the voices of George BLAIR and Eddie JACKSON respectively from conversations with Eddie JACKSON and George BLAIR during the above-described distributions of narcotic drug controlled substances. Special Agent Smith related to me all of the foregoing facts and circumstances.

18. On November 5, 1971, a records check (pursuant to Special Grand Jury Subpoena) was made with Michigan Bell Telephone Company when it was determined that the telephone located at 19315 Hubbell, Detroit, Michigan telephone number 313-864-4854 was listed in the name of John G. THOMAS and was a non-published telephone listing.

19. Normal investigative procedures have not succeeded in establishing the full extent of the activities of Eddie JACKSON and George BLAIR relating to their purchase or sale of controlled substances, nor has Eddie JACKSON's and George BLAIR's source of supply been identified or established. Based on my knowledge and experience as a Special Agent of the Federal Bureau of Narcotics and Dangerous Drugs, and the experience of Supervisory Agents and other Special Agents of the Bureau of Narcotics and Dangerous Drugs, normal investigative procedures reasonably appear to be unlikely to succeed in establishing the identies of Eddie JACKSON's and George BLAIR's co-conspirators, aiders and abetters, their places of operation

for their transportation of controlled substances to the Detroit, Michigan area and for their manufacture and distribution of controlled substances within the Detroit, Michigan area, and their times, places, schemes, and manners for selling, buying, possessing, concealing, delivering, distributing, or paying for controlled substances. My experience and the experience of other Federal Agents has shown that narcotics (controlled substance) raids and searches have not, in the past, resulted in obtaining evidence of who the raided violator's co-conspirators, aiders and abetters were, and where their places of operation were to transport controlled substances into an area or manufacture or distribute controlled substances about an area. Experience has shown that controlled substance manufacturers and distributors do not keep records of their controlled substance actions. It is the experienced belief of Special Agents of Region VI that additional surveillances of JACKSON's and BLAIR's and his operation, if continued on a regular basis, will jeopardize the outcome of the investigation, and will do little to reveal the manufacture and distribution network. JACKSON and BLAIR are extremely surveillance conscious and have two men on duty outside 19315 Hubbell to spot surveillance units. Special Agent Smith has been unable to move any further vertically or horizontally in the JACKSON/BLAIR operation because of JACKSON's and BLAIR's extreme caution. S-1 does not personally know anymore facts concerning the JACKSON/BLAIR operation.

20. For the reasons set out hereinabove, all normal avenues of investigation are closed, and it is my belief that the only reasonable way to develop the necessary evidence to discover the other persons involved in the JACKSON/BLAIR manufacture and distribution of controlled substances network, and their locations and schemes of operation, is to intercept wire communications from the telephone utilized by Eddie JACKSON and George BLAIR located in the premises at 19315 Hubbell, Detroit, Michigan, and carrying telephone number 313-864-4854, which has been, is being, and is about to be used by Eddie JACKSON, George BLAIR and others as yet unknown, in connection with the commission of the above-described offenses.

21. No other application is known to have been made to any judge for authorization to intercept, or for approval of interception of wire or oral communications involving any of the same persons, facilities, or places specified herein.

22. Any expenses necessarily incurred pursuant to a court order under section 2518(4)(e) of Title 18, United States Code, relating to technical assistance rendered to the Government by a communications common carrier or other person will be processed by the Bureau of Narcotics and Dangerous Drugs for payment by the United States Government, unless the court should direct otherwise.

WHEREFORE, based on the facts related above, and my experience as a Special Agent of the Bureau of Narcotics and Dangerous Drugs, I believe, and have reason to believe that the probable cause allegations stated in paragraph 3 (a), (b), (c), and (d) have been sustained.

/s/ Ronald S. Garibotto
RONALD S. GARIBOTTO
Special Agent
Bureau of Narcotics
and Dangerous Drugs
U.S. Department of Justice

Subscribed and Sworn to Before me
this 11th Day of November
1971 at Detroit Michigan

/s/ Cornelia G. Kennedy
UNITED STATES DISTRICT JUDGE